



Office of Cerro Grande Fire Claims

CERRO GRANDE FIRE ASSISTANCE ACT POLICY ON THE DECLINE OF RESIDENTIAL REAL PROPERTY VALUES (April 2, 2001)

BACKGROUND

1. Final Rule

Section 295.21(e) of the Final Regulations implementing the Cerro Grande Fire Assistance Act (CGFAA) provides that compensatory damages may be awarded for reduction in the value of real property that was owned prior to the Cerro Grande Fire (Fire) if:

- (1) The claimant sells the real property in a good faith, arm's length, transaction that is closed no later than August 28, 2002 and realizes a loss relative to the value that would have been obtained in the absence of the Fire ("realized loss"); or
- (2) The claimant can establish that the value of the real property was permanently diminished as a result of the Fire despite the fact that the real property was not sold ("unrealized loss").

2. Analysis

PricewaterhouseCoopers Analysis of the Los Alamos Post-Fire Residential Real Estate Market

The Office of Cerro Grande Fire Claims (OCGFC) retained PricewaterhouseCoopers (PwC) to determine if the Fire had reduced residential real estate market values in Los Alamos County. PwC issued a preliminary report, which the OCGFC released to the public on February 5, 2001. Public comments were received through:

- 1) a public forum on February 7, 2001; and
- 2) electronic mail from February 5 - 15, 2001.

Based on this feedback, PwC revised its preliminary report, taking into account additional data, and using additional statistical methodologies. These methodologies included an analysis of pre-Fire and post-Fire prices based on pre-Fire price trends in Los Alamos County and on price trends in comparable communities.

Findings

PwC's findings were issued in its March 28, 2001 final report. In computing changes in housing prices in Los Alamos County, PwC used data for residential sales occurring from January 1, 1996 to January 31, 2001. Based on those computations, PwC found:

- There was a post-Fire decline in the average value of single-family houses in Los Alamos County between 3% and 11% (average decline). While the average decline in value for all single-family houses sold in Los Alamos County between May 2000 and January 31, 2001 is in this range, specific houses might have experienced higher or lower rates of diminution outside of this range.
- Except for the Eastern area, diminution in property values did not appear to be statistically significant for duplexes, quads, or other non-single-family units. However, as in the case of single-family homes, particular units could have experienced diminution.

The March 28, 2001 Final Report is available in the Los Alamos and White Rock Cerro Grande Customer Service Centers and is available on the internet at www.fema.gov/cerrogrande.

POLICY

The OCGFC will handle diminution claims caused by the Cerro Grande Fire in Los Alamos County¹ for both realized and unrealized losses on a case-by-case basis as follows:

1. Realized Losses

Compensatory damages will be awarded to a Claimant for diminution in the value of real property, if:

1. the decline in property value is due to the Cerro Grande Fire,
2. the Claimant owned the property prior to the Fire,
3. the property was sold in a good faith, arm's length transaction that was entered into after May 3, 2000 and is closed no later than August 28, 2002.

In adhering to this rule while attempting to exert the least amount of influence on the real estate market, the OCGFC will determine the diminution value through a two-part equation which calculates first a "but-for-Fire" value and then subtracts the actual sales price to arrive at the diminution amount. The equation is:

- a) $(\text{pre-Fire value}) \times (\text{growth index}) = \text{but-for-Fire value}$
- b) $(\text{but-for-Fire value}) - (\text{sales price}) = \text{realized diminution amount}$

Pre-Fire Value

In order to arrive at a pre-Fire value of the property (the value of the property as of May 3, 2000), the OCGFC will request and compensate claimants for the reasonable cost to obtain a pre-Fire appraisal of the property in question. In order to ensure consistency, accuracy, and fairness to all claimants, the OCGFC will develop guidelines as to what additional information is required in the pre-Fire appraisal. These guidelines will be provided to each claimant by the claims reviewer prior to requesting the appraisal.

But-For-Fire Value

In order to calculate the diminution value of the property, the Claims Reviewer will need to adjust the pre-Fire value to the calculated value that the property would have been at the time of the sale, if the Fire had not occurred (this is the but-for-Fire value). This will be accomplished by using a model specifically developed to reflect price trends as analyzed by PwC.

Diminution Value

The diminution value will be determined by subtracting the sales price from the but-for-Fire value. If the diminution value is outside of the average decline as identified in the PwC analysis, the Claims Reviewer may use other resources to confirm, substantiate, and/or determine the diminution value.

¹ Because diminution claims have only been received from Los Alamos County, the OCGFC believes that only the Los Alamos County real estate market suffered a diminution in property values. However, any claimant who feels that he/she has a diminution claim as a result of the Cerro Grande Fire may file a Notice of Loss and substantiate the claim. The OCGFC will decide the claim and fix compensation, if any, based upon supporting documentation provided by the Claimant.

The OCGFC intends to request subsequent analyses of the Los Alamos County residential real estate market until the real estate market returns to price levels that would have prevailed in the absence of the Fire, or up through the second quarter of 2002, whichever is sooner. This will assure that future developments in the local real estate market are understood and properly incorporated in the OCGFC policy.

2. Unrealized Losses

In order to determine if a claimant's residential real property suffered a permanent decline in property values, even though the claimant does not plan to sell his or her property in the near future (unrealized loss), the OCGFC plans to conduct another follow-up analysis of the residential real estate market in Los Alamos County, which will be released in the second quarter of 2002. The OCGFC will entertain such claims at that time.

If the findings of this follow-up analysis indicate that properties continue to reflect a decline in the market value due to the Fire, the OCGFC will compensate those claimants for whom an ongoing, permanent but unrealized loss in residential real estates values, can be substantiated at that time. Those claimants will be allowed to either file a first time Notice of Loss, or reopen a Notice of Loss as set forth in Section 295.34(d) of the Final Rule to claim such damages. However, nothing in the policy should be construed as prejudging whether any specific claim for unrealized loss in real property value (diminution) will be paid. Claims are decided on a case-by-case basis by authorized officials who determine and fix compensation, if any.

Special note to claimants whose properties were physically damaged by the Cerro Grande Fire:

To safeguard against double recovery, claims reviewers will take into account compensation claimants may have received or will receive under the CGFAA and/or from insurance recoveries to repair/replace structures and restore land damaged by the Fire. Claims reviewers will review with claimants how these values will be factored into diminution claims for both realized and unrealized losses.